An exploration into the implications of the 'compensation culture' on construction safety

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Abstract

In UK society there has been a growing perception that unjustified, frivolous or fraudulent legal claims are being made following safety accidents or incidents, in what has become known as a 'compensation culture'. Participant observation of construction practice during a three year period enabled the unpacking of the complexity of the compensation culture as manifested on a large construction project (+£500m) in the UK, and revealed associated implications for safety management. The wider social perception a compensation culture exists in UK society was also found to being the case in the more narrow setting of this construction site, as making fraudulent compensation claims against their own organisations was a socially acceptable behaviour within some front-line workgroups. The organisation recognised this and took numerous steps to protect themselves from potential liability; which was unhelpful for safety, as actions were more about managing potential claims, than managing safety. This study demonstrates that the way H&S is viewed in a wider social context can influence the way H&S is managed in organisations, has provided deeper socio-cultural understanding into the complexity of safety practices, and raises important questions about our research approaches, which have traditionally focused in positivist roots, and have been unable to holistically capture social aspects that influence safety.

Keywords: compensation culture, safety, applied ethnography

Ethnographic prologue:

I was sitting in the back of health and safety (H&S) department's van, while the H&S manager and an H&S advisor chatted in the front of the vehicle. We slowly drove along the haul road towards the main office coming back from a H&S inspection on the site. We then noticed a subcontractor's articulated lorry, a damaged client vehicle and four individuals standing by the side of the road - we had just missed a collision.

We pulled over, got out, and the H&S manager immediately asked whether any of the three client representatives or the subcontractor's truck driver were hurt - thankfully they were all fine. The H&S manager then asked me to gather the names of the individuals involved. I reached into my pocket, pulled out the site inspection sheet from our visit, and jotted down their names. While the H&S professionals inspected the minor damage to client's van, I began chatting with Sam, the truck driver. He explained that he had been reversing in order to make the appropriate angle to turn a corner. He had checked his mirrors, but they must have been so close to him that he couldn't see them in his mirror, and that he stopped when he 'felt it'. He shook his head, let out a large exhale and said 'I spoke to my gaffer (manager) on the phone. He was going mental (very angry)…. Called me an idiot….these things would only happen to me'.

*Sam and I got back into the van with the H&S manager and H&S advisor. Soon after we began driving back to the main office, Sam started to defend his case: 'I checked my mirrors but couldn't see them, there is no way they should have been that close to me… but I'm f**ked 'cause there is three of them, nobody is going to believe me over them'. The H&S advisor responded: 'we will get his all down on a statement when we get back to the office'. Sam looked at me in the back seat, (with a smile while shaking his head) and again repeated 'it would only happen to me'.*

The H&S manager, advisor, three employees of the client, Sam and I walked together into the H&S office. The other H&S professionals in the room stopped typing, and seemed to perk up. They knew

something was wrong, but didn't know the extent of it. I sat with Sam as the H&S advisors prepared the documentation for the witness statement. Sam was of similar age to me and I felt comfortable in his presence. He turned to me and (referring to the office management staff) said 'after I hit him, I had never seen so many white hats… they all just seem to come out of nowhere'.

The H&S manager asked me to fill out a witness statement as I had been involved. I looked down at the piece of paper in front of me, and it felt like I had been involved in a crime. It was daunting enough and I hadn't even been directly involved in the accident. I wondered how Sam felt. I glanced over to see him slouched down by the H&S manager's desk, looking deflated and defeated. I grabbed the box of chocolates on the desk in front of me, walked over to Sam and offered him one, but H&S advisor sharply intervened, 'he can't have that – after an accident he can't eat or drink till he's been D and A tested'. I apologised, sheepishly sat back down, and began to fill out my witness statement.

*Suddenly, one of the client's representatives stopped writing his statement, and said 'I don't feel very well.' I quickly looked up. One H&S advisor rolled his eyes, but the H&S manager without hesitation stated: 'We need to take him to hospital immediately.' One of the H&S advisors that hadn't been involved in the incident escorted the client's representative out the office and took him to the hospital. After they left the room, another H&S advisor muttered 'here we go…' I finished my statement, and left the H&S office with a trainee H&S advisor. He turned to me as we were walking down the steps and said 'I'm done with this health and safety. There's so much bulls**t.'*

I began to reflect. The subcontractor supervisor was blaming his truck driver for the incident. The driver was blaming the client for being too close. The client blamed the truck driver for the collision. The principal contractor distanced themselves by managing the situation through very formal systems and protocols. But did any of these actions really help safety? It was lucky the truck only reversed into another vehicle, rather than a person. Had we reduced the risk of re-occurrence? There was never any in-depth investigation into whether there had been effective communication of the truck movements in the area; or whether the haul road could be re-designed to make it easier for

trucks to turn; or whether this truck movement was a regular occurrence or a one-off. Instead there was isolation rather than togetherness, conflict rather than problem-solving, blame rather than trust; driven from an overarching awareness amongst all people and parties that there could be claims for accident compensation made. This was 'safety', and the so-called compensation culture was playing a major role.

1.0 Introduction

The opening ethnographic extract describes the lead author's experiences on a construction project (+500m) in the United Kingdom (UK). The research involved several short-term ethnographies, carried out during a wider three year study. Over this period, there were approximately 1100 employees working on the project, and the researcher essentially became a member of the H&S department, using H&S advisors as gatekeeper to ease access to different workgroups and site areas on what was a large project, both graphically and in value. Through 'being there' over a considerable period of time, and being armed with the right theoretical tools and insights to understand the prevailing culture in new theoretically informed ways, various themes emerged from the researcher's experiences. A prominent theme was the perception of a 'compensation culture' on the site, and the consequences this had for safety management in practice.

A 'compensation culture' is the term used to imply that within a society, a significant number of claims for compensation are unjustified, frivolous, or fraudulent (BRTF, 2004). The notion of a compensation culture as a social problem has been prominent in UK public debate for more than three decades (Quill & Friel, 2016), and whilst there is a growing body of research to suggest that the compensation culture in the UK is one of perception rather than reality (BRTF, 2004; Williams, 2005; Williams, 2006; Lewis et al., 2006; House of Commons, 2006; Hand, 2010; Hyde, 2013), such wider social considerations can still have significant influence on safety and safety management within the work environment, including on construction sites (Sherratt 2016).

Such concepts are often extraneous to the work at hand, and perhaps unsurprisingly construction safety research has historically focused on the wide range of tangible and clearly applicable areas including accident causation (Mitropoulos, 2005), culture (Choudhry et al., 2007), leadership (Kines et al., 2010), design (Behm, 2005) and metrics (Oswald et al., 2018). Yet the industry does not operate in a vacuum, and broader social phenomena of interest should arguably be acknowledged and empirically explored. Consequently, the aim of this paper is to empirically unpack the complexity of the 'compensation culture' phenomenon within this context; in terms of its existence, manifestation, the implications it has for organisational practice, and the consequences for safety management. This will enhance our practical understandings of this nebulous concept by providing insights into how it 'works' in practice on a large UK construction site.

Mobilising an ethnographic approach, drawing upon various strands of safety theory and weaving in empirical findings, a dialogue is set up that continually relates theory to the practice as observed and experienced. From these intense research experiences, deep, and fine-grained ethnographic insights can reveal subtle, nuanced and pertinent understandings that can otherwise be overlooked in research knowledge. In this case it reveals how the 'compensation culture' phenomenon was manifested, experienced and how it shaped aspects of safety behaviour on a large multinational construction case-study project (+£500m) in the UK.

2.0 Limitations of construction safety research literature

There has been a predisposition to understand the construction industry through the quantitative methods of the natural sciences (Love et al., 2002). Phelps & Horman (2010) concluded that such traditional construction research methods have enabled a focused but narrow understanding, and they are not adequate to investigate the complex interactions that lead to many of the industry's pervasive social and technical problems. More specifically to construction safety, Zou et al. (2014) highlighted there may be a gap between the direction taken by researchers and the practical needs in the construction industry. Their review of construction safety research papers suggested that

researchers predominately adopt an objectivist, philosophical standpoint. Zou et al. (2014:325) concluded that: 'although this approach has value, it is also necessary to realise that safety learning is a process that takes place among and through interactions with other people and artefacts on construction sites'. It can therefore be suggested that such positivistic approaches are over precise, do not account for uncertainty of social life, lack detail and depth of social action and fail to acknowledge the researcher-researched interaction in the production of social knowledge (Pole & Morrison, 2003).

Dainty (2010) highlighted that concern is raised when such theoretical approaches are applied to social aspects of construction and, in particular, to people. The processes in construction industry are carried out by people in social settings through social engagements, as influenced by wider social phenomena, and construction is therefore is very much a people industry (Barrett & Sutrisna, 2009). Seymour et al. (1997) also pointed out that the 'object' of the research in construction management is usually people. Safe and unsafe actions are committed by people, and are deemed as being safe or unsafe by people. They can be committed in social engagements (e.g. a supervisor telling a worker to do a task they are unskilled for) and in social settings (usually the construction site or office). Therefore, it is arguable that research approaches should be sufficiently broad and diverse in order to capture and develop knowledge that is able to draw on these social perspectives, as well as those from natural science settings that enable us to quantify and measure.

However, the dominance of the 'traditional' positivistic approach can be seen in the ways in which we research safety in practice. For example, focusing on measurable and quantifiable problems, such as accidents and causality – as encompassed within the Safety I approach as labelled by Hollnagel (2014), inevitably limits the breadth and depth of understanding of the wider contexts that surround safety management and arguably generates knowledge within very narrow parameters. As Hollnagel's Safety II model notes, variation in the everyday and the inevitable complexities of 'work as done' must be acknowledged in order to develop effective and proactive approaches to safety

management. Yet such variation cannot easily be empirically explored by 'Safety I' methods that require, for example, *a priori* categorisations as surveys do. Instead we should look beyond traditional positivistic approaches that seek to prove and measure, and instead mobilise research methodologies and methods that are able to reveal more exploratory and experiential findings. This point has also been illustrated by others, for example Dekker's (2005) proposition of Model 1 and Model 2 with regards to safety rules, also reveals the influences and subsequent knowledge generation potential of different research approaches. Model 1 is rooted in scientific management, where generic rules are devised by experts to safeguard operators at the front-line; while Model 2 views rules as dynamic, bottom-up, local, and situated for specific activities. In this second model, competence is strongly emphasised as being the ability to adapt rules to the diversity of reality (Hales & Borys, 2013). While a combination of both Model's 1 and 2 has been recommended, the reliance on research methods rooted in positivist traditions has resulted in a focus on Model 1, and subsequently limited understandings of Model 2 which also requires the need to acknowledge diversity and variation as found in practice. As Hales & Borys (2013:211) noted 'effort needs to be focused on incorporating operators' experience into rule design', therefore research understandings of the complex, dynamic and situational perspective of safety rules as found in Model 2, which has emerged from sociological and ethnographic studies, should also be sought.

The perpetuation of limited traditional, positivistic research approaches has arguably led to valuable but narrow knowledge, which is unable to capture the wider and holistic societal influences on safety, such as that posed by the presence of a compensation culture on construction site safety. As a result, this phenomenon remains unacknowledged and barely understood, yet it has real consequences, as safety in all industries and the public sector has become enmeshed in a mire of litigation. This study therefore attempts to close this gap in research knowledge with regards to the implications of the compensation culture on safety, by adopting a non-traditional research approach, which can lead to different avenues of knowledge to complement other lines of inquiry.

3.0 Methodology

A research approach that specifically focuses on describing and interpreting the nuances of the social world through first-hand field study is ethnography (Saunders et al., 2009). It is a method of studying a specific social group in their natural setting usually through participant observation (Phelps & Horman, 2010). Ethnography places researchers in the 'thick of it', allowing them to examine and participate in phenomena as perceived by participants and represent these as accounts (Phelps and Horman, 2010). It is an approach highly suited to exploring and representing the everyday practices of people on projects (Shipton, 2013), and is now emerging as part of the repertoire of approaches for understanding the construction industry (see, for example, Borys, 2012; Oswald et al., 2017; Wu et al., 2015).

The research present is an applied use of ethnography, which involves intense, relatively brief excursions into the lives of the participants (Pink & Morgan, 2013). The researcher went beyond abstracted observation to develop short-term research engagements that were intensive, potentially intrusive and involved raising what participants may think are irrelevant questions – none of which is sustainable over long periods of time (Pink & Morgan, 2013). From these intense research experiences, deep, and fine-grained empirical data can reveal more subtle and nuanced insights when contextualised through analysis and dialogue with theory; which may otherwise be overlooked by more traditional research approaches such as interviews or questionnaires. Ethnographic insights are about understanding indigenous or local knowledge (Sillitoe, 2002), where the research needs to 'unpack everyday practical activities, common beliefs, values and discourses in which this [indigenous] knowledge is manifested' (Pink et al., 2010:651). This case study project involved the researcher undertaking the role as a participant observer within the H&S department on a large construction project in the UK (+500m). The researcher became a member of the H&S department, which included a H&S manager, six H&S advisor and a trainee H&S advisor. Each advisor was allocated a different physical space on the project that included different teams, departments,

trades and works. Intense short-term ethnographies were conducted in these different spaces, at different times throughout the wider three-year study. The researcher used the H&S advisors as gatekeepers to help ease access into each of these different site areas. The H&S advisors were aware of the researcher's interest in safety, and were pivotal in updating the researcher with happenings, raising goings-on that they thought would be of interest, providing access and putting other workers at ease with the researcher's presence. Being attached to a University, the researcher was perceived by workers as in a student or apprentice type role, with the researcher often being asked questions such as: 'When you filling big Tam's [H&S advisor] boots then?' This apprentice role helped also put the participants at ease, as the researcher had a lack of power or knowledge in their respected trades or work. When studying an unfamiliar setting, the ethnographer is essentially a novice (Hammersley & Atkinson, 2007); a role that can be very productive (Murchison, 2010). The researcher was in his early career and therefore prior to the study had little preconceived ideas on the research topic; which fitted well with the inductive nature of the study. The inductive approach enabled the 'compensation culture' theme to be brought to light and to generate new theories on a poorly understood area of construction safety.

During the fieldwork , over 1500 hours were physically spent in the research setting, over 200 field note records were written and approximately 150 units of documentary data (e.g. meeting minutes, survey results or lessons learned) were collected. As memories are 'frail' and 'selective' (Denscombe, 1998:151) there is a need to note-take in the field, where possible, as well as making additional notes outside the field or as soon as possible after the observation (Pole & Morrison, 2003). Low-inference descriptors (See LeCompte & Goetz, 1982) provide ethnographers with the basic observational data gathered and interpretive comments can be added, deleted or modified later. There were a variety of low-inference descriptors used: writing on meeting minute notes when in meetings, the 'notes' section on a mobile phone when on site, and directly onto a laptop if in the office. This is not unusual, as for a variety of reasons, the initial fieldnotes are 'jottings, snatched' during the course of the observed action (Hammersley & Atkinson, 2007:143), and were written

following: sitting in site meetings, site offices, attending site walkarounds and undertaking informal conversations and observations that are paramount to the research approach.

The use of multiple data sources, such as conversations and observations, collected and compared at different phases of the fieldwork and involving different participants and contexts (Hammersley and Atkinson 2007), were undertaken to ensure the internal reliability of the process. This was supplemented by the use of 'participant researchers', where informants from the field were asked to discuss and comment on the researcher's interpretations. With regards to validity, LeCompte & Goetz (1982) argue that internal validity is actually ethnography's major strength. The extensive periods in the field allow for continual data analysis and refinement; the mitigation of any bias, as they grow in experience and knowledge of their research environment; and as participant observation is conducted in a natural setting, this reflects the reality of the participant life experiences more accurately than contrived settings. In terms of external validity, it has been suggested by Pink et al (2010:657) that 'the situated nature of ethnography need not preclude the generation of recommendations for informing practice, so long as they can be appropriated in ways that reflect the nuances of the contexts in which they are subsequently applied.' Consequently during the process of analysis of the data collected for this study, specific characteristics of the site have been muted enabling the findings and recommendations of this work to instead '… highlight pertinent insights or areas of promising practice'.

These data were then analysed using a thematic approach, which includes: familiarisation with data, generating initial codes, searching for common themes, reviewing them, defining and naming themes (Braun & Clarke, 2006). This approach allows the researcher(s) a 'bird's-eye view' of emerging patterns that could be drawn out (Aronson, 1994). In this study, the 'compensation culture' was one of these themes that developed. Textual representation is interwoven with analysis and hence fieldwork write-up is a representation of ethnographic data and an integral part of analysis (Pole & Morrison, 2003; Hammersley & Atkinson, 2007). The extracts included within the

paper are representational, not anecdotal, and are selected to best illuminate and empirically evidence the insights that emerged from the short-term research engagements, as relevant to the manifestations of a compensation culture and its consequences for safety management in practice.

4.0 The existence and manifestations of a compensation culture

One of the elder members of the security team came into the H&S office and asked me for a favour. He was a hands-on individual, experienced and well-respected in his role. It wasn't unusual for him to ask me for a favour, which was typically a technological issue he was struggling with on his computer. He had a CD disk in his hand and asked if I knew how to play it and fast-forward videos. The disk was from the CCTV, and we began watching. After a few minutes, the security officer stated 'there he is', pointing at an individual who limped towards the main office door from the car park. He opened the door, and went inside the building to attend a meeting regarding a compensation claim for his injury. We fast forwarded again, waited a few minutes, before again the individual appeared from main door, exiting the building. Again he limped across the car park. He turned the corner, towards his vehicle, and away from sight of the main office front door, he began to walk faster. Then there seemed to be no evidence of a limp. He hastily scurried towards his vehicle and jumped in. 'He is at it!' [Suggesting a fraudulent claim] exclaimed the security officer. At this point, a H&S advisor in the room intervened: 'Doesn't surprise me, we have guys claiming they are injured and then going on holiday hoping that they are going to get paid while being away'. Another advisor then stated: 'One of the guys in my area has got a claim in. His injury must be nothing short of miraculous, as he is now in America on holiday'. There was a strong belief that some accident and injury claims were fraudulent, yet according to the H&S advisors the claims would 'rarely be challenged', and often were just paid out.

The above vignette is an example of the belief that many fraudulent compensation claims were being made by workers, suggesting the existence of a compensation culture. In his commissioned report to the UK Prime Minister, titled 'Common Sense Common Safety', Lord Young of Graffham

(2010) highlighted that the growing compensation culture in the UK was having adverse effects on health and safety performance. In 2010, the then UK Prime Minister, David Cameron, (See Lord Young of Graffham, 2010) put it thus:

'Good health and safety is vitally important. But all too often good, straightforward legislation designed to protect people from major hazards has been extended inappropriately to cover every walk of life, no matter how low risk. A damaging compensation culture has arisen, as if people can absolve themselves from any personal responsibility for their own actions, with the spectre of lawyers only too willing to pounce with a claim for damages on the slightest pretext. We simply cannot go on like this.'

Hand (2010) observed that since the mid-1990s national newspaper articles concerning the compensation culture have increased exponentially, yet the number of claims have actually demonstrated a broad decline in the same period. Williams (2005:514) also argued that the 'loose talk of a compensation culture' lacks clear evidential basis but is beneficial for the media to increase their sales; and Lord Young of Graffham (2010:46) went as far to state that the health and safety agenda 'had been hijacked by the tabloid press, whose reports often contributed to misinterpretation and misunderstandings by regularly exaggerating and ridiculing instances which in reality have little or nothing at all to do with health and safety.'

The increase in compensation claims for damages (as defined under tort law) in the UK is grounded in The Access to Justice Act 1999 and its conditional fee agreement enabling lawyers to secure their fees from any compensation paid to their client - in more common terms 'no-win no-fee'. Initially introduced to enable poorer people to have access to the same legal system as those rich enough to afford to pay lawyers in advance, the reduction in financial risks for those seeking compensation has had several significant and perhaps unintended consequences, indeed Brown & Hanlon (2014:17) stated that 'rarely has a single law change had such a pernicious effect on the national psyche'.

The UK legal profession has proactively promoted this change in law and sought out new clients for compensation cases through many prolonged advertising campaigns, heavily promoting the individual's right to compensation for accidents sustained either personally, e.g. a trip on a public pavement, or at work. Such lawyers seek to promote the claim process as risk and stress-free as something that will be dealt with as a private transactional exercise between anonymous bureaucratic organisations, and that however minor the injury, seeking compensation has now become something of a 'consumer right' (Quill & Freil, 2016). As found on the case study site, there can also be a belief within the construction workforce that making exaggerated claims was socially acceptable practice, as in the following ethnographic vignette:

The H&S advisor and I were at the accident scene. A young worker in his mid-20s had injured his hand. The advisor explained how it had stemmed from a changeover between nightshift and dayshift. He pointed to a section of the bracing on the temporary structure – a diagonal steel bar a couple of metres in length. One of these bars had squashed the workers hand in between the horizontal bar and the fallen diagonal bracing bar. The advisor explained that the diagonal bar was firmly in place, and even though 'it hadn't been bolted in by the guys on nightshift, it would still require a strong force to move it.' The injured worker had been directing a materials basket that was being lowered. He had put his hand on top of the horizontal bar, but the basket made contact with the diagonal bar above, and the bar crashed down onto his hand. It 'took fellow workers a good two minutes to calm him down as he panicked - it felt like a long time'. The H&S advisor explained that in the witness statement, a worker stated the injured person had stood on an 18 inch tool box to reach above the horizontal brace and direct the basket. The foreman had also told the H&S advisor this. The H&S advisor explained that 'he shouldn't have done stood on the box, and wouldn't have been able to reach the horizontal bar if he hadn't.' Since these original witness statements had been taken, they had been changed to remove all mention of the tool box. The H&S advisor raised this with the foreman. The foreman didn't want any blame proportioned to the injured person, which may affect

his claim, justifying his position with 'it caught him good, he took a real sore one'. The H&S advisor closed the conversation with the comment: 'we all play the game.'

This vignette is an example of a compensation claim being made that was fabrications of reality, by the addition or omission of certain details, which again suggests the existence of a compensation culture. Workers and supervisors appeared to view this as socially acceptable behaviour, and would sometimes make favourable statements for an injured workgroup member to improve their chances or value of a claim. Aside from the pain and suffering the injured worker would have experienced there could also be a lack of job security and a reduction in their take-home pay, depending on their contractual agreement and work situation. It is therefore perhaps unsurprising that in some cases others in the workgroup are sympathetic, and so try to help the injured person receive as large a claim as possible from their employers, who can themselves easily be positioned as a faceless corporate entity and so not personally damaged by such behaviours. The social acceptance of compensation claims amongst construction workers appeared to have contributed to its manifestation.

In wider society, the compensation culture has created a belief that when accidents do occur someone must be at fault, and financial compensation is perceived to make good of an injury, rather that enabling an acceptance that accidents can and do happen (Lord Young of Graffham, 2010). Hence, in the current social climate, UK individuals are not only able to better identify work-related factors that cause injury, but are also more likely to sue their employer (Quill & Freil 2016). Within the construction industry, an industry where occupational health-problems and accidents are significantly above the national averages, this is likely to mean more claims against employers. While such statistical evidence can disclose growth or decline in such claims (providing reliable statistics are available), it does not reveal whether the values underlying the changes are socially desirable (ibid). It is important to note here that the actual numbers of claims should not be the point of focus, although compliance with legislative health and safety provisions to prevent the potential causes of

such claims is considered essential, but instead the excessive risk aversion and misunderstanding of risk assessment should be the cause for concern (House of Commons, 2006). Williams (2005) also noted that statistical evidence is both incomplete and somewhat equivocal, and that even if we could determine with certainty how many claims there were, there is still the question of how many claims is too many. Any attempt to establish if a compensation culture exists should arguably look beyond the numbers of injury claims to whether there had been a substantial increase in those without merit or settled to avoid the work involved in countering them in court (ibid). Quil & Freil (2016) anticipate that the level of damages in serious injury cases will continue to rise, and that the current compensation culture issues, will be continued to be debated for some time to come.

Lord Young of Graffham (2010) and Lofstedt (2011) agreed that the media are a driving force in the common misunderstanding around safety. Sherratt (2016) also noted that the media is a significant contributor to society's perception of safety, and that these wider social ideas and understandings of safety undoubtedly influence that found on construction sites. She explained that there were clear examples of compensation claims being paid out, as it was simply easier and more economically sensible to do so, rather than to pay to fight. The reality of whether claiming behaviour may be rising or falling, and whether the claims are actually legitimate, exaggerated or bogus, is apparently irrelevant; as what matters is what people believe to be the case (BRTF, 2004; Williams, 2005). As Sherratt (2016:31) stated that: 'unfortunately it is only really the perception that matters; it is perception that makes people overcompensate and exceed the actual requirements of legislation, it is perception that makes people produce piles and piles of paperwork just in case they are sued in the future, it is perception that gives safety its low standing in contemporary UK society'. It is also such perceptions of the compensation culture, as it manifested on the case study site, which also had significant implications for safety management practice.

5.0 The safety implications of a compensation culture

5.1 Excessive paperwork

I was having a discussion with one of the directors on the project in a meeting about my research. The topic of conversation digressed into the vast amount of H&S paperwork on the project, which had previously been described by H&S advisors as 'enough to choke a horse'; 'desk-breakers' and 'living in a virtual safety world'. The director explained that: 'what's happening is that the RAMS[1] are developing into at least a hundred pages. It's been driven from the client, from insurance, from perceived expectations of what we need. And the problem is that the guy on the drill who's actually building the job is never going to read 300 pages. Our method statements can be 300 pages long, but there are only two pages that are needed for its main purpose [the methods and risks for the workers]. The rest is just arse covering. The guy wants the two bits just to tell him how to do the job safely, and invariably that's two pages out of at least a 100 pages. We need to go back in time and tell the guy on the ground how to do the job safely, rather than having to have all of the stuff that the client really wants. The client wants to see people's certificates, they want to see that you've consulted with somebody, they want to see insurance documents, they want everything…They are not worried about content and in my opinion they're just ticking a box and making sure everything is covered.' Returning to the H&S office, the H&S manager asked how my meeting went. I raised this issue we had discussed and he stated: 'And a 300 page method statement. Would it really defend you in court? Imagine a lawyer saying, OK tell me what is on page 163 paragraph four…? Even summarising the documents would be difficult. And you are telling me that the workers out there, that don't do words, they do tools, are meant to read and understand this before they start work. Does that really demonstrate communicating a safe method of work? The lawyers would throw that document out the window in court and say now what you got?'

Dekker (2014) explained that safety management has become increasingly bureaucratic, because of a number of drivers including: regulation, liability and insurance arrangements, outsourcing and contracting. While bureaucratisation has brought many benefits including standardisation, transparency and control (ibid); there are also undesirable secondary effects such as, paperwork,

[1] Risk Assessment Method Statement

costs, time drain, and compliance expectations (see, for example, Hale & Borys, 2013). In the above vignette, the fear of compensation claims appeared to exacerbate these undesirable effects, as paperwork expectations became impractical; time, and therefore costs, on this approach became unhelpful; and compliance expectations became 'virtual' rather than real.

Williams (2005:508) explained that: 'the 'problem' we started with seems to have come down to this: that whatever may be the actual likelihood of irresponsible litigation, many believe themselves to be at heightened risk of being unfairly sued'. One of the ways the project responded to this 'heightened risk' was to extensively document health and safety. Despite the frequent lack of foundations for compensation culture claims, the implications surrounding such perceptions are very real, and the fear of litigation has been demonstrated to change behaviour (BRTF, 2004). For instance, in a survey of over 700 UK doctors, two thirds revealed they were practicing defensive medicine as a result of the 'compensation culture' (BBC, 2001). Lord Young of Graffham (2010) explained an overcautious attitude has developed when interpreting Health and Safety (H&S) regulations in the workplace; and the HSE (2008) acknowledged that there is a problem with risk aversion in the UK. The Löfstedt report (2011) clarified that the problem does not lie with the health and safety regulations but more with the way they are construed and applied.

Companies are increasing their bureaucratic processes in an ongoing quest to manage liability, which is potentially a 'distraction from the actual business of keeping people safe at work' (Sherratt, 2016:30). Indeed, Borys (2012) explained that there was a tension for managers and supervisors to balance their desire for fewer work method statements in practice, whilst also paradoxically wanting more, in the hope it will protect them from litigation. In the above vignette, the H&S professionals viewed the amount of paperwork as unhelpful for creating site safety; which is consistent with the advice of the HSE (2013): 'keep health and safety documents functional and concise, with the emphasis on their effectiveness rather than sheer volume of paperwork. Focusing too much on the formal documentation of a health and safety management system will distract you from addressing

the human elements of its implementation – the focus becomes the process of the system itself rather than actually controlling risks.'

The above vignette highlights how an integral part of the safety management system paper-based. Organisations can find security in copious, complicated documentation instead of any valid risk analysis process (Haddon-Cave, 2009) but this has been met with resistance from workers (Knudsen, 2009). It is important to note that: 'safety isn't an entity – something separated from work and practice and sat on its own in a folder on the shelf of a site cabin – but something we can create between ourselves on sites on a daily basis' (Sherratt, 2016:181). While H&S documentation does have a useful place in terms of retaining knowledge of how tasks can be performed safety, this research study found that the unwarranted paper-driven approach was an unhelpful way of managing safety, and its excessive volumes of paperwork were being driven by increased fear of compensation claims.

Löfstedt (2011) argued that more emphasis needs to be placed on genuine safety and concern for workers' wellbeing if fear of the compensation culture is to be eliminated. In response to that Löfstedt's report, the Department for Work and Pensions (2011) acknowledged that health and safety systems would be ineffective if businesses continue to over-comply with health and safety regulation due to fear of civil litigation. The compensation culture has led to fears that businesses will be sued for even the most minor of accidents and hence set aims to eliminate all workplace risk, instead of adopting a rational and proportionate approach (Lord Young of Graffham, 2010).

5.2 Worker engagement with safety

I was walking with an operative on my way to the work site. One of the H&S advisors had just raised that he was not wearing an item of PPE[2]. As we walked the operative explained his view: 'You have to admit, Health and Safety is a bit of a joke at times - it goes too far. You wouldn't be able to finish the

[2] Personal Protective Equipment

job without sometimes breaking the rules. You just need to use your own common sense as a risk assessment sometimes… For example, sometimes your gloves are a hazard. They can get stuck on things. So if you're in an area where they might get caught on thing - take them off. Also, your glasses, if they steam up so you can't see clearly - take them off. The other day I was in a confined space with limited mobility and my hardhat was restricting vision and getting in my way, so I took it off.'

Though workers understood that PPE should be worn most of the time, and that it was for their own safety, they were frustrated with the occasional times that they believed it created more of a risk than it mitigated. For instance, on a warm and sunny day I had the following discussion on-site:
Operative: '…Long may summer continue, though it's a bit of sun trap down here, can't stop sweating, that's why I was not wearing my glasses. They keep steaming up.'
Researcher: 'Is that what safety man [H&S advisor] was talking to you about?'
Operative: 'Yes mate, I agree you should wear them as a site rule, but it needs to be more flexible. I would be forever cleaning them in this heat, and would never get the job done.'
Researcher: 'Yea, I see what you're saying… you think wearing glasses should be risk assessed out on days like this?'
Operative: 'There just needs to be more flexibility. It is like having a rule which says "you have to eat all your meals with a knife and fork", but sometimes it is better to have a spoon… but that would be breaking the rules'

Dekker (2006) noted that leaders should acknowledge that there could be a gap between 'work as imagined' by the leaders and the 'work as actually performed' by the workers. The above vignette demonstrates this gap, as workers desired a more common sense approach that involved flexibility on safety rules; which suggests a Model 1 approach, where rules are generic and made by experts to protect front-line workers, (see Dekker, 2005) was the dominant perspective to safety rules. A combination of both Model 1 and 2 has been previously recommended (Hales & Borys, 2013), yet

the potential fears of repercussions associated with the flexible, local, situational nature of Model 2 contributed to stifling a multi-model perspective. For example, the researcher observed a conversation where a Site Manager strongly stated: '*there is no such f**king thing as common sense safety in construction… you would be laughed out of court*'.

Within the construction industry context, Paap (2003) found that safety should be interpreted in two forms: the official procedures and the actual working operations. A distinction that represents the difference between the rules that are stated, and the rules that actually govern the workplace (ibid). With the actual operating procedures out in the field, workers must make continuous 'guesstimates' about the potential extent of costs and the likelihood of the hazards they face and balance this with the push to complete their work as fast as possible. The double-provision of official and actual procedures was to the advantage of the employers at the expense of the workers, as 'in a worst-case scenario, contractors argue that workers are knowledgeable about the risks and procedures (given the official procedures and training) and thus should be held responsible for their own deaths' (Paap, 2003). While responsibility may be shifted, creating rules that are not possible to abide by, or creating more rules, does not improve safety (Amalberti 2001), and ironically writing more rules may only result in more opportunities to violate (Borys, 2012). In the above vignette, the workers wanted the rules to be more flexible so that their actions were not perceived as unsafe violations; yet the compensation claim fears represented a barrier to this flexibility. Other research studies have revealed similar findings, such as Somerville and Abrahamsson (2003) who revealed that workers preferred to use 'common sense' rather than safety rules to keep them safe; and Laurence (2005) also reported that safety rules should reflect common sense.

Borys (2012) explained that a view that emerges from safety rules and culture research is that safety is an emergent property of a socio-technical system; meaning that depending on the current situation workers find themselves in they can seek to interpret, modify and apply safety rules accordingly. This social construction of what it means to work safely is challenging for managers,

regulators and safety professionals to embrace, as it lets go of the 'certainty' offered through prescribed rules (ibid) – a certainty that is arguably more of an 'illusion of safety' than any reality (Borys, 2009). This socially constructed approach is not valued, studied and accepted in practice as much as it could or should be (Borys, 2012; Sherratt, 2016). However such an approach was observed by Löwstedt (2015), who undertook an ethnographic study with two separate roles and perspectives; as both an observer and as a worker on a construction site operated by a large construction company. He noticed how regulations were breached repeatedly, especially a lack of compliance with gloves, jackets and glasses, and in his time as a worker he explained that mist kept getting inside his glasses as he worked, so he had to take them off simply to be able to see. He continued to do this when necessary, subsequently learning that everyone in the group did this and it was something socially accepted within that specific context.

The workers on the case-study project desired more flexibility with the rules. While the above ethnographic vignette may appear a minor dispute around wearing correct PPE, these recurrent differences in opinion caused significant divisions between management and workers:

*Over lunch, a H&S advisor and I sat in the H&S meeting room. He was hunched up over his salad, slowly eating, and pausing every so often, as if his mind was elsewhere. I asked what had been going on. He put his fork, sat back, and said 'sitting comfortably?' Not knowing what to expect, I remained silent and nodded. He began: 'So I asked a group of workers: 'do me a small favour guys, put your chin straps on.' Boom! It erupted with confrontation. Comments were made from 'you're a hairy b******d' to 'you only come here when it is sunny'. So I thought... f**k you! And asked why, then, aren't you clipped on? An argument ensued, and then I spoke with the foreman and there was still nothing doing. So, I said I was going down to speak with General Foreman. The General Foreman and Site Engineer were at the end of their rope trying to get them to work to the RAMS. I said 'we're shying away from it if nothing is done' so I went to the Works Manager. The foreman pulled the teams in and told me it had been sorted. But after I'd left work yesterday the 'goings on' had reached*

*senior management level, and s**t start to fly (emails) between them. I got a phone call from the works manger the following day to explain one the senior managers was going nuts [mad] and 'I'd lost a friend' [the Works Manager]. It got to senior management level and petrol was thrown on an already fierce fire which put me out in the cold.'*

The above vignette demonstrates how management tried to approach safety with a 'rule-enforcement' mentality, regardless of the context or situation; but this frustrated the workers. This approach was being driven by fears of litigation, and that rule flexibility in certain situations could 'come back to bite us, if something went wrong' [Works Manager]. The management's perception was that non-compliance was simply the result of deviant workers not obeying rules, rather than workers necessarily altering their working practices for safety reasons within specific contexts. This perception more closely aligned with the traditional approaches of safety management, which relied on the implementation of mechanistic regulation and vigorously enforced compliance (Langford et al 2000), rather than the more modern paradigm shift towards personalisation, participation and worker engagement (Sherratt et al 2013).

This latter approach has been credited for supporting the 'safety success' of the recently completed London Olympics project, which has subsequently been held up exemplar in its health and safety management practices and which prioritised respect, trust, fairness openness, collaboration, clarity, communicative and empowerment (see Bolt et al., 2012). However, as realised on this site, taking the former traditional approach created notable conflict and breakdowns in the relationships between the workforce and management, which in turn could be very damaging for H&S performance.

In positive error cultures, errors are transparent and good errors are seen as opportunities to improve, whilst bad errors are learnt from to create a safer environment (Gigerenzer, 2014). Yet, in this study these deviations from rules were seen as violations, rather than potential opportunities to

learn. Workers commented that the top-down approach made them 'delusional', as if the safety systems would automatically keep them safe without any thought:

I was on a site-walkaround with a H&S advisor. There were three scaffolders working on the structure, and one was sitting smoking and texting on top of a rebar cage. The H&S advisor noticed him and stated: 'At height without any protection, smoking and on your mobile phone (both in undesignated areas). That is what you could call a hat-trick' (three safety breaches at the same time). At this point the scaffolder on the ground intervened, and quickly spoke with energy and passion: 'You know with all these safety rules and PPE we think we are safe but we are delusional. 'Wear this and you will be safe'. What is his hardhat going to do for him there? If he falls off the rebar, it will just fall off his head? We think we are safe but we are not'

The above vignette reveals that the scaffolder believed that there were site rules that did not apply to all situations, such as having to wear a hardhat when there is nothing above the workers. He suggested that by adhering to all the site rules and wearing all the required PPE, workers perceived they were safe; but in fact this alone would not guarantee their safety. Allowing workers to have mindfulness, or mental skills, has been previously recommended for being important for safety. For example, Reason (2008) pointed out that while many front-line workers have little chance of changing or making systematic improvements; mindfulness can help them to avoid error traps and recurrent accident patterns.

5.3 Concealing errors and othering blame

A H&S advisor and I walked into the one of the site offices, where one of the a site engineers was located. There was paperwork, folders, plates, mugs and general mess all over the desks in the office. The H&S advisor cheekily opened with: 'Is this how you live?' In a similar tone, the site engineer responded:

'Worry about the housekeeping out there [on-site] not in here… how can I help you gentlemen?' They then descended into conversation, while I observed.

H&S advisor: 'What is your understanding of the fire?'

Site engineer: 'My understanding?'

H&S advisor: 'Yes, what did you hear about it…'

Site engineer: 'My understanding is that the flames were licking the chimney [he lifts his arm up as far as he could reach from his office chair]. I could be speaking out of turn here, but I believe it was quite a significant fire'

H&S advisor: 'That was my understanding as well… that is what I heard. We had originally heard it was a… [he starts stomping the ground with his right foot suggesting it was a small smouldering fire]. But then the whispers started, and I heard it took several fire extinguishers to get it out. I would have loved to have seen the evidence, but not even a batten was left. It was all taken away and replaced.'

Site engineer: 'Well that is just the standard cover up.'

H&S advisor: 'But why?'

Site Engineer: 'They will have had something to hide, not following the standard procedures or whatever. I don't know, but something will have been up.'

The lack of openness and honesty frustrated the H&S department, as it made it very difficult to understand what had happened without timely sharing of all relevant information. This would be raised frequently in the H&S weekly meetings. H&S advisors would explain that 'it is difficult to react 2-3 days later after an incident, the accident scene has changed, we are not getting the information from the people involved, the stories change 3 to 4 times and reports are being sanitised at various different management levels'. The manager in the meetings seemed embarrassed when the client would be aware of accidents before the principal contractor: 'It has become tiring having the client saying to us: that you probably already know about the incident that occurred...and we have no idea about it'.

Blame can bring both positive and negative possibilities for safety (Pidgeon & O'Leary, 200). The knowledge that blame for accidents may result in legal action can motivate organizations and individuals to reflect upon and scrutinise their actions (ibid). However, if workers have the perception of being blamed this can be at odds with openness and learning from safety incidents (Collinson, 1999). In the above ethnographic vignette, the site engineer believed the incident was a *'*standard' cover up, suggesting that this was usual practice within the project. Typical characteristics of a blame culture are when errors are concealed and hidden by employees (Whittingham, 2004), and when errors were revealed, individuals and groups would try and blame others for failings.

The theory of othering was defined by Lister (2004: 101) as the 'process of differentiation and demarcation, by which the line is drawn between 'us' and 'them' – between the more and the less powerful – and through which social distance is established and maintained.' When incidents occurred the social divide between 'us'-and-'them' groups were more apparent, as individuals and organisations tried to blame others for failures. The focus on individual human failings (Dekker, 2002:3) is the 'old view' of human error where the system in which people work is basically safe and the main threat to safety comes from the inherent unreliability of people; progress on safety can be made by protecting the system from unreliable humans through training, selection, procedures, automation, and discipline. In contrast, a 'new view', the Systems perspective, goes beyond the local events and attempts to find contributory factors in the workplace, organisation and system as a whole (Reason, 2008). System approaches are more appropriate as accidents are caused by multiple factors that occur due to the complex interactions of numerous work system elements, which are both human and non-human (Holden, 2009). However, person-centred approaches to safety management still prevail (ibid), possibly because in the UK it is more legally convenient to blame individuals (Reason, 2008). The fear perception of potential compensation claims makes it intuitively appealing approach to adopt a Person approach, despite that its drawbacks strongly outweighing any benefits (Reason, 2008). In particular its inexplicable link with a blame culture (Reason, 2008)

which damages honest and open reporting that is crucial for effective risk management (Reason, 1997).

A consequence of the compensation culture in this research study was the promotion of a Person perspective to unsafe acts. A 'Person' focuses on individual errors, and blames them for forgetfulness, inattention or moral weakness (Reason, 2008). It is directed at reducing unwelcome variability in human behaviour, usually through methods such as fear poster campaigns, additional procedures, disciplinary measures, retraining, naming, blaming and shaming (Reason, 2000). A Person approach as far as possible uncouples organisational responsibility from an individual's unsafe acts in the interests of others (ibid). The shortcomings of the 'Person' approach significantly out-weigh the advantages, as it is extrinsically linked with blame (Reason, 2008). The blame culture on this project meant there was misreporting, under-reporting and late reporting, which was detrimental for safety learning.

In this research study, a blame culture was being perpetuated and reinforced by the compensation culture, as fear over claims meant that individuals and parties would blame each other when problems arose. This meant that the way safety was managed was to not problem solve to avoid reoccurrence, but to instead blame others for failings. It has been previously reported the compensation culture has created a perception that for every accident that occurred, blame should be attributed (Lord Young of Graffham, 2010). However, there is a considerable body of research evidence that has condemned blame cultures (Reason 2000; Reason, 2008; Dekker, 2009; Meng, 2012; Douglas, 2013), as highly damaging for H&S performance. Creating a no-blame (just or open) culture is the first step to joint working and effective problem solving (Dekker 2009; Meng, 2012). In a no-blame culture, time is not wasted allocating blame (ibid) but instead, parties involved try to identify the best possible solution (Bennett & Peace, 2006). Compensation culture type claims created a fear on the project researched in this study; where parties tried to protect and distance

themselves from such situations, rather the work together to create a safer working environment, as in the opening ethnographic snapshot.

6.0 Conclusions

Compensation culture as a safety concern is a phenomenon that is rarely explicitly acknowledged within construction safety research. Through an applied ethnography, this study unpacked the complexity of a compensation culture and how it promoted the undesirable consequences of: blame and a reduction in safety learning opportunities; excessive paperwork in a safety management system; and a lack of worker engagement. Similar to other UK workplaces, this study found that there was a perception that a compensation culture exists within the construction industry, where claims occurred that were thought to being exaggerated or even false. Yet compensation claims were socially accepted, or even encouraged, by workers and supervisors, as part of the way accidents had to be dealt with.

The compensation culture was found to being inexorably intertwined with on-site safety management practice. Incident investigation often followed a course designed to protect against claims, and to apportion blame to others, rather than trying to problem solve to reduce the risk of reoccurrence. Fear of being blamed in turn led to an underreporting of accidents and incidents, which were often either misreported or reported late, consequently creating an environment in which learning from safety failure became very difficult. There was a reliance on excessive paperwork in an attempt to provide robust 'evidence' of safety management, but this was itself time consuming for the management and H&S team, as well as unhelpful for the workers actually carrying out the work tasks as it was actually of little benefit to their own work practice. Safety rapidly became managed in a 'traditional' way, where site rules were inflexible and enforced with a top-down approach in which workers had little input or engagement. This created conflict and frequent breakdowns in the relationships between management and workers.

It is argued that traditional positivist construction management and safety research approaches are still too regularly applied, leading to valuable but narrow types of knowledge. This has not provided a holistic research understanding of construction safety problems, as some social aspects, such as the presence of a compensation culture, which can promote unhelpful and damaging safety approaches, have not received the attention they deserve. Through an applied ethnographic approach, this study was able to not only reveal the existence and manifestation of a compensation culture within the construction site context, but also its many different and nuanced consequences in practice – revealing how the compensation culture 'works' in UK constructions. This insight is able to inform and safety management approaches to acknowledge and challenge these influences, and so mitigate the negative implications of this wider social phenomenon within the construction site environment.

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